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Bob L. Corkins, Director

Sam Brownback, Governor

March 7, 2016

House Federal & State Affairs Committee
Kansas Statehouse, Room 346-S
300 SW 10th Street
Topeka, KS 66612

Re: Testimony of Dir. Bob Corkins on SB 243 – OAH is Proponent
Hearing scheduled for March 9, 2016

Honorable Chair and Members of the Committee,

The Office of Administrative Hearings (OAH) supports this proposal to transfer administrative responsibility of the Kansas Civil Service Board (CSB) to our agency. The Department of Administration (DofA), which currently hosts the CSB, asked OAH last year if we would be willing to accept this transfer of responsibility and we agreed to cooperate. It's in that spirit that I ask you to support and advance this proposal.

Currently, and for many years, OAH has performed the lion's share of CSB functions under a contractual agreement with DofA. As with dozens of other state agencies – and now some local governments as well – OAH has contractually supplied administrative law judges to participate in CSB fair hearings held in accordance with the Kansas Administrative Procedure Act. However, our contract with DofA differs from that of other client agencies in that OAH additionally contracts to provide secretarial services relating to the CSB. For example, those clerical services include CSB scheduling, reports, meeting notices, minutes, and financial duties such as the payment of Board Member expenses.

Essentially, but not completely, DofA has out-sourced the CSB operations to OAH. The current OAH/CSB contract projects an FY16 expense of \$60,000 for the combination of secretarial services plus hearing services that we will perform for CSB this year. I believe there are no other state expenditures that are attributable to the CSB and we are informed by DofA that it currently has no FTE personnel budgeted to the CSB. Therefore, today's proposal merely formalizes what has successfully operated in practice for quite some time.

The only impact to OAH that we foresee from this bill regards the budget process. Rather than having our CSB services compensated through contractual fees, OAH will need to receive a direct legislative appropriation for these state costs. We estimate that the direct appropriation needs to be the same \$60,000 annual amount that we presently receive from fees to DofA. Because about half of this amount is generated by billable hours performed by an OAH administrative law judge, that portion will vary according to the caseload and case complexity of the CSB disputes that arise. Naturally, OAH's prospective defense of the CSB budget before the legislature will include this hourly accounting of hearing time.

All OAH revenue is currently generated by fees, and virtually all of our fees are generated by billable hours actually performed for each client at a uniform hourly rate. Given that CSB *secretarial* fees are the only current exception to our hourly fee revenue, it's appropriate that we would be called upon to defend

a direct CSB appropriation prospectively under SB 243. I consider this a small annual chore that OAH is willing to accept in order to assist and streamline some operations of DofA. Aside from this small budget matter, the bill currently poses no differences for the functioning of the Civil Service Board – it is both policy neutral and fiscally neutral.

Two Proposed Amendments

Since the 39-0 Senate passage of this bill last month, OAH and DofA spotted a statutory oversight that requires a simple amendment. KSA 75-2949 regards relevant DofA authority for the CSB, but was not addressed in the original bill draft. Its subsection (f) requires employees who desire to appeal their disciplinary determinations to file a request for fair hearing with the DofA Director of Personnel Services. To help the timely filing of these appeals with the proper new state agency, I've attached a proposed amendment that would specify the hearing requests must be filed directly with the Director of *Administrative Hearings*. This amendment is wholly consistent with, and I contend also very important to achieving, the overall objective of the bill.

The second amendment I request is less important to the core objective of this bill, so if the Committee's wisdom is to refrain from this change, I will be perfectly content to continue supporting the bill without it. However, as this transfer of CSB hosting appears more imminent, I've become more personally keen about having the OAH ability to help the CSB function smoothly and efficiently. Therefore, this second amendment proposes that the CSB case management procedures mirror those that apply to every other State Board under the terms of the Kansas Administrative Procedure Act (KAPA).

Deletion of the identified text in subsection (b) of KSA 75-2929b would repeal those terms that currently serve to override the provisions of KAPA. Thus, the effect of their deletion would be to apply the full KAPA process to all CSB cases. In practical terms, because CSB is the "agency head" for purposes of KAPA, this amendment would allow CSB to designate an OAH administrative law judge to preside over CSB hearings. And just like every other State Board, the CSB could alternatively choose to preside over any given case itself without designating an OAH hearing officer.

This amendment would allow CSB cases to be conducted more efficiently and would enhance the Due Process rights of appellants. By giving CSB the option to designate a hearing officer, more hearings could be conducted by telephone for the travel convenience of appellants and witnesses, more prompt and convenient hearing dates could be scheduled, and all appellants would have the right to appeal a hearing officer's decision to the full CSB. The CSB would be required to accept appeal briefs and could choose to schedule oral arguments for such appeals; thus, the amendment would create an additional level of Due Process review before appellants are forced to resort to any expense of an appeal to District Court. Each of these benefits would be achieved by this amendment simply by treating the CSB like any other State Board under KAPA.

Again, OAH will support SB 243 with or without these amendments, but we strongly prefer these amendments for the public policy advantages they would bring.

Thank you for your time and consideration.

Sincerely,

Bob L. Corkins, Director
Office of Administrative Hearings

Amendment #1

75-2949. Dismissals, demotions and suspensions; basis; procedure; hearings; status after demotion; employee relieved of duties pending investigation.

(a) An appointing authority may dismiss or demote any permanent employee in the classified service when the appointing authority considers that the good of the service will be served thereby. For disciplinary purposes, an appointing authority may suspend without pay a permanent classified employee for a period not to exceed 30 calendar days. No permanent employee in the classified service shall be dismissed, demoted or suspended for political, religious, racial or other nonmerit reasons.

(b) Prior to dismissal, demotion or suspension of a permanent employee in the classified service, the appointing authority shall furnish the employee by certified mail to the employee's last known address, return receipt requested, or by personal delivery, a statement in writing specifically setting forth the reasons and factual basis therefor. A copy of such statement shall be furnished immediately to the director. This statement shall contain notice of the proposed dismissal, demotion or suspension and shall specify the proposed effective date thereof. Except as otherwise provided in the Kansas civil service act, a proposed suspension, demotion or dismissal shall become effective no less than three calendar days nor more than 14 calendar days following the date the notice of such proposed suspension, demotion or dismissal is personally delivered to the employee or deposited with the post office as certified mail. If in the opinion of the appointing authority conditions warrant, the appointing authority may relieve the employee of duties or change the duties of the employee during such period. If the employee is relieved from duty during such period, the employee may be continued in pay status, or placed on leave of absence without pay by the appointing authority. In the statement proposing suspension, demotion or dismissal, the appointing authority shall offer the employee who is proposed to be suspended, demoted or dismissed an opportunity to reply in writing, or appear in person, or both, before the appointing authority or a designated representative of the appointing authority, on the issue of the proposed suspension, demotion or dismissal prior to the time such suspension, demotion or dismissal is specified by the notice to become effective. The statement shall specify the date, time and place by, or at which, the employee may reply in writing or appear, or both. If the employee chooses to appear in person on the issue of the proposed action, the employee may be represented by a person of the employee's choice.

(c) Upon request by the employee, or upon the initiative of the appointing authority, the appointing authority may extend the time for reply or appearance, or both, if the circumstances warrant. Notice of any such extension shall be furnished to the employee and to the director of personnel services. The proposed suspension, demotion or dismissal shall not become effective until after the extended period has expired.

(d) Following the employee's response to the opportunity to reply to the proposed action, or upon expiration of the time for such reply, if no reply is made, the appointing authority, or the designee of the appointing authority, shall notify the employee of the final decision on the proposed action. Such notice shall be in writing and shall be sent by certified mail to the employee's last known address or personally delivered to the employee on or before the effective date of the proposed action. A copy of the notice shall be furnished immediately to the director of personnel services. This final notice of decision by the appointing authority or the designee of the appointing authority, to suspend, demote or dismiss the employee shall inform the employee of the employee's right to appeal the decision to the state civil service board within 30 calendar days after the effective date of the action.

(e) At any time prior to the effective date of the proposed suspension, demotion or dismissal or, if an appeal is taken to the state civil service board, at any time prior to the final decision of the board, the appointing authority, or the designee of the appointing authority, may withdraw or modify the action proposed to be taken or taken against the employee. Notice of any such withdrawal or modification shall be given in writing to the employee by certified mail to the employee's last known address or by personal delivery. A copy of the notice shall be furnished immediately to the director of personnel services.

(f) Any permanent employee finally dismissed, demoted or suspended, may request a hearing from the state civil service board to determine the reasonableness of such action. Each such request for a hearing shall be in writing and shall be filed in the office of the director of ~~personnel services~~ **administrative hearings** within 30 calendar days after the effective date of the dismissal, demotion or suspension. Additional days shall not be added to the thirty-day period in which an appeal may be filed if the notice of the effective date of the dismissal, demotion or suspension is mailed to the employee. The board shall grant the employee a hearing in accordance with the provisions of the Kansas administrative procedure act within 45 calendar days after receipt of such request. At the hearing the burden of proof shall be upon the employee to establish that the appointing authority did not act reasonably in taking such action.

(g) No employee shall be disciplined or discriminated against in any way because of the employee's proper use of the appeal procedure.

(h) A permanent employee who is demoted pursuant to this section need not meet the qualifications for the class of positions to which demoted if the appointing authority determines that the employee can reasonably be expected to perform satisfactorily the duties of the position to which the employee is demoted. A permanent employee who is demoted pursuant to this section shall have permanent status in the class to which demotion is made, effective on the date of the demotion.

(i) In case of a situation in which the possibility of proposing dismissal, suspension or demotion of a permanent employee is indicated, but where the appointing authority needs time to conduct an investigation before proposing such action, or in a situation where immediate removal of an employee from such employee's job is needed to avoid disruption of work, or for the protection of persons or property, or for a similar reason, the appointing authority may relieve the employee of duties or change the duties of the employee for a limited period and keep the employee in pay status. The secretary of administration shall provide by rules and regulations, adopted pursuant to K.S.A. 75-3706, and amendments thereto, procedures to be followed in such cases.

Amendment #2

75-2929b. State civil service board; part of department of administration; management functions; organization and meetings; hearings by members; compensation and expenses of members.

(a) The board shall be attached to the department of administration and shall be within the department as a part thereof. All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the secretary of administration. All vouchers for expenditures and all payrolls of the board shall be approved by the chairperson of the board or a person or persons designated by such chairperson and the secretary of administration or a person or persons designated by such secretary.

(b) The board shall organize annually by electing one of its members as chairperson and one as vice-chairperson. The board shall meet regularly at least once each calendar quarter and special meetings may be called by the chairperson or by a majority of the board. A quorum of the board shall consist of three members. ~~No action may be taken by the board without the affirmative vote of at least three members. In the holding of hearings of appeals by employees or appointing authorities pursuant to the Kansas civil service act, the board may delegate to one or more of its members the authority to serve as a hearing examiner for such a hearing, but action upon any such appeal shall require the concurrence of at least three members of the board.~~

(c) Meetings of the board shall be open to the public and no meeting or hearing of the board shall be held unless at least three members of the board are present. The director of personnel services shall act as secretary of the board or may designate a person to serve as the secretary of the board. The board shall keep records and minutes of its business and official actions, and such records and minutes shall be public records open to public inspection, subject to rules and regulations specifying the hours and conditions of inspection.

(d) Each member of the state civil service board attending meetings of such board, attending a subcommittee meeting thereof authorized by such board, or serving as hearing examiner at a hearing under the Kansas civil service act shall be paid per diem compensation of \$70 and shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. In addition, each member, who resides more than 100 miles from the location of an authorized meeting or hearing, shall receive per diem compensation of \$35 for each day in travel to or from such meeting or hearing if such travel is on a day other than the day or days of such meeting or hearing.